IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.14085 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VITTHALBHAI RANCHHODBHAI TADVI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 14085 of 2003

MR JOY MATHEW for Petitioner No. 1

MR KUNJAL D PANDYA, AGP for Respondent Nos. 1-2

NOTICE SERVED BY DS for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 22/07/2004

ORAL JUDGEMENT

RULE. Mr.Kunjal D. Pandya, learned AGP, appears and waives service of rule on behalf of respondent Nos.1 and 2. Though served, none appears on behalf of respondent No.3. With the consent of the respective

parties, the matter is taken up for final hearing today.

2. Respondent No.3 herein, Kanchan Lallu Tadvi, was the owner of the land in question. It is the case of the petitioner that by virtue of the Deed of 1979, the said land in question was transferred to the petitioner. The Dy. Collector was of the opinion that by transferring the said land there is a breach of the provisions of Sections 73A and 73AA of the Bombay Land Revenue Code, proceedings were initiated by him. By order dated 09-07-1996 in Case No.24 of 1995 the Dy. Collector held that prior permission of the competent authority was not taken before transferring the land in question and, therefore, there is a breach of provisions of Sections 73A and 73AA of the Bombay Land Revenue Code and directed the petitioner to hand over the possession to the respondent No.3 herein, the original land owner.

3. Being aggrieved with the said order the petitioner preferred a Revision Application before the State Government being Revision Application No.38 of 1997 which came to be heard by the learned Joint Secretary (Appeals) and by his judgment and order dated 28-07-2003 dismissed the said revision application and confirmed the order passed by the Dy. Collector dated 09-07-1996 in Case No.24 of 1995 by holding that the land in question was transferred in the year 1979 by Sale Deed. However, he has held that the said Sale Deed is on a Stamp Paper of Rs.10 + 3.50 and the same was not attested by the competent officer. It was further held that before transferring the land, prior permission of the competent authority was not obtained and, therefore, confirmed the order passed by the Dy. Collector. Being aggrieved by the said order dated 28-07-2003 the petitioner purchaser has preferred the present petition under Article 226 of the Constitution of India.

4. Mr.Joy Methaw, learned advocate for the petitioner, submitted that assuming that there is a transfer then in view of the provision of Section 73AA of the Bombay Land Revenue Code which is amended and inserted in the year 1980, if it is between Adiwasi and Adiwasi then the provision of Section 73AA would not be applicable. He has submitted that this argument was contended before the learned Secretary (Appeals) but he has not dealt with the same.

5. Considering the provision of Section 73AA3 (b) if any occupancy is transferred by tribal to another tribal at any time during the period commencing on the 4th April, 1961 and ending on the day immediately before the

date of commencement of the Bombay Land Revenue (Gujarat Second Amendment) Act, 1980 then in that case the transfer of occupancy shall be valid as if it were made under Section 73A. This aspect has not been considered by the learned Secretary (Appeals) while rejecting the Revision Application No.38 of 1997 and confirming the order dated 09-07-1996 passed by the Dy. Collector.

6. Under these circumstances, the matter is required to be remanded to the learned Secretary (Appeals) by directing to consider the question with regard to applicability of Section 73AA(3)(b) of the Bombay Land Revenue Code and decide whether the same is applicable or not and more particularly in view of the fact that even as per the order passed by him dated 28-07-2003 he has observed that there is transfer in the 1979.

7. In that view of the matter the petition succeeds partly the judgement and order dated 28-07-2003 passed in Revision Application No.38 of 1997 is hereby quashed and set aside. The matter is remanded back to the learned Secretary (Appeals), Revenue Department for deciding and disposing of the same afresh after considering the provision of Section 73AA(3)(b) of the Bombay Land Revenue Code and after giving an opportunity of hearing to all concerned parties.

8. It goes without saying that the impugned order dated 28-07-2003 passed by the Joint Secretary (Appeals), Revenue Department is quashed and set aside and the matter is remanded back to the Secretary (Appeals), Revenue Department for deciding and disposing of the revision application afresh automatically the stay order which is granted during the pendency of the revision application would be restored.

Rule is made absolute accordingly.

Sd/-

[M.R.SHAH, J]

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'Bhavesh'